

Internal Revenue Service

Number: **200648011**

Release Date: 12/1/2006

Index Number: 368.05-00, 368.06-00,
1361.00-00, 1361.03-01

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:CORP:5

PLR-124015-06

Date:

September 06, 2006

LEGEND

Oldco =

Newco =

StateA =

StateB =

BusinessA =

p =

Dear :

This letter responds to your representative's letter dated March 20, 2006, requesting rulings as to the Federal income tax consequences of a proposed transaction. The information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Oldco is a StateA corporation that operates as a StateA “Not for Profit Corporation.” Oldco states that it is a C corporation that is not a tax-exempt entity for Federal income tax purposes and does not meet the definitional requirements of § 501(c)(3) of the Internal Revenue Code. Oldco is engaged in BusinessA. Oldco has outstanding one class of equity memberships. The holders of the equity memberships (the “Members”) are entitled to vote on corporate affairs and corporate transactions. However, under StateA law, the Members are not entitled to receive distributions of net profits. Oldco has p Members, all of whom are individuals or grantor trusts.

Newco is a corporation being formed under the laws of StateB that will operate as a StateB nonprofit corporation. Newco will have outstanding solely one class of equity member. Newco has no assets [or possibly a minimal amount of assets] and is not yet engaged in any activities. Under the laws of StateB, the holders of equity memberships have rights similar to the rights held by the Members in Oldco; however, it is the opinion of the taxpayer, that, in addition, Newco can make distributions out of net profits to its equity members (and distributions in dissolution).

Management of Oldco believes that if it were able to make distributions to its Members and if it were able to operate as an S corporation this would facilitate certain changes in operations, business lines, increases in capital, and/or revenue sources that Oldco may wish to undertake in the future. To achieve these objectives, the taxpayer intends to engage in a proposed transaction (“Transaction”) through two steps (“Steps”).

- Step (I) Oldco will merge into Newco (the “Merger”) with each Oldco Member becoming a member in Newco and receiving a membership interest in Newco in exchange for the membership interest the Member presently holds in Oldco. In addition, Newco will probably change its name.
- Step (II) Newco will elect (the “S Election”) to be treated as an “S corporation” within the meaning of § 1361(a).

REPRESENTATIONS

Oldco and Newco have made the following representations in connection with the proposed transaction:

REPRESENTATIONS WITH REGARD TO THE STEP (I) MERGER

(a) Immediately prior to the Merger, Oldco will have outstanding, and, immediately following the Merger, Newco will have outstanding: (i) no stock or equity interest except for the single class of member interests in Oldco and Newco that will be held by the Members; (ii) no warrants, options, or convertible securities; and (iii) no debt if such debt would constitute either a security or an equity interest in either Oldco or Newco.

(b) Immediately prior to the Merger, Newco will be engaged in no activity and will hold no assets (except for possibly holding a minimal amount of assets: (i) for the purpose of paying Newco's incidental expenses; and/or (ii) if necessary for maintaining Newco's status as a corporation in accord with StateB law).

(c) Immediately following the Merger, Newco will hold all the assets held by Oldco immediately prior thereto, except as further described in this representation (c). The only change in Oldco assets occurring from the Merger will be as a result of Oldco and/or Newco incurring filing, accounting, legal fees, and/or other expenses incident to the Merger including the cost of obtaining governmental rulings or approvals for or with regard to the Merger. The total of all these transaction costs will be less than one percent (1%) of the fair market value of the net assets of Oldco immediately prior to the Merger.

(d) The Oldco liabilities to be assumed (as determined under § 357(d)) by Newco, and the liabilities to which the assets transferred to Newco are subject, were incurred in the ordinary course of business and are associated with the assets transferred.

(e) There is no plan or intention for either Oldco or Newco to issue any member interests or other equity interest in conjunction with the Transaction, except for the member interests in Newco being issued to the Oldco Members as described in Step (I).

(f) The Oldco Members will receive solely member interests in Newco.

(g) None of the Members will be dissenters and there is no plan or intent for either Oldco or Newco to redeem or otherwise acquire the membership interest of any of the Members.

(h) The exchange ratio will be one-for-one. Following the Merger, each of the Oldco Members will hold a single member interest in Newco.

(i) The Newco member interests received by the Members will be substantially identical to the member interests in Oldco for which they are exchanged, except that, additionally, it is likely that the Newco member interests will permit the Members to receive distributions from the net profits of Newco if Newco were to make such distributions (or upon dissolution).

(j) For each Member, the fair market value of the Newco member interest received will be approximately equal to the fair market value of the Oldco member interest surrendered in exchange therefor.

(k) Oldco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

REPRESENTATIONS WITH REGARD TO THE STEP (II) S ELECTION

(l) Neither Oldco nor any predecessor corporation has ever been an S corporation.

(m) At the time of the S election: (i) all of the Newco members will be either individuals or grantor trusts; (ii) none of the individual members will be a nonresident alien; and (iii) each of the Newco members that is a grantor trust will have as its owner a living individual who is a United States citizen or resident and such trust will meet the requirements of § 1361(c)(2)(A).

(n) There is no plan or intention to revoke or otherwise terminate the S corporation election that is being made by Newco in Step (II).

REPRESENTATIONS WITH REGARD TO BOTH STEP (I) AND STEP (II)

(o) Each of the Members will each pay her, his, or its own expenses incurred in connection with the Transaction.

(p) To the extent there are any future distributions by Newco, it is intended that such distributions will be equal in amount for each Member and no Member will receive any preferential treatment with regard to any distribution.

Furthermore, the taxpayer's representative has stated that, because of concern over the legal issues involved, the representative is unable to render "an unqualified opinion" with regard to the Federal income tax consequences of the Merger.

RULINGS

Section 3.01(33) of Rev. Proc. 2006-3, 2006-1 I.R.B. 122, 124, provides that, in general, the Internal Revenue Service will not rule on the qualification of a transaction as a reorganization under § 368(a)(1)(E) or under § 368(a)(1)(F). However, as provided in the revenue procedure, the Service will rule where the case involves a "Significant Issue." Taking into account the circumstances in this case including the statement of the taxpayer's representative that he is unable to render an "unqualified opinion" in this case, we conclude that it is appropriate to rule in this case.

Based solely on the information submitted and the representations set forth above, we rule as follows:

RULINGS WITH REGARD TO THE STEP (I) MERGER

- (1) The Step (I) Merger will be viewed as an acquisition of Oldco assets by Newco in exchange for Oldco's receipt of member interests in Newco plus Newco's assumption of liabilities, followed by Oldco's distribution to its Members of the Newco member interests.
- (2) The Step (I) Merger is a reorganization within the meaning of § 368(a)(1)(E) and § 368(a)(1)(F). Oldco and Newco will each be a "party to a reorganization" within the meaning of § 368(b).
- (3) No gain or loss will be recognized by Oldco upon the transfer of assets to Newco in exchange for Newco member interests and Newco's assumption of liabilities (§§ 357(a) and 361(a)).
- (4) No gain or loss will be recognized by Newco on the receipt of Oldco assets in exchange for Newco member interests (§ 1032(a)).
- (5) The basis of each asset received by Newco will be the same as the basis of such asset in the hands of Oldco immediately prior to the Merger (§ 362(b)).
- (6) The holding period for each of the assets received by Newco will include the period during which such asset was held by Oldco (§ 1223(2)).
- (7) No gain or loss will be recognized by Oldco upon the distribution to its Members of the Newco membership interests (§ 361(c)(1)).

- (8) No gain or loss will be recognized by the Members upon receipt of member interests in Newco in exchange for their Oldco member interests (§ 354(a)(1)).
- (9) Each Member's basis in the Newco member interest received will be equal to the basis of the member interest in Oldco surrendered in exchange therefor (§ 358(a)(1)).
- (10) For each Member, the Member's holding period for the Newco member interest received will include the period during which the Member held the Oldco member interest exchanged therefor, provided that the Oldco member interest is held as a capital asset in the hands of the Member on the date of the exchange (§ 1223(1)).
- (11) The Merger does not result in a closing of the tax year and Oldco's taxable year continues in the name of Newco (§ 381(b) of the Code and § 1.381(b)-1(a)(2) of the Income Tax Regulations). In addition, Newco (as the successor to Oldco in the "F" reorganization) will retain the Oldco EIN. See Rev. Rul. 73-526, 1973-2 C.B. 404.
- (12) As provided by § 381(a), Newco will succeed to and take into account, as of the date Step (I) is consummated, all the items of Oldco described in § 381(c), including any Oldco earnings and profits or any deficit therein.

RULINGS WITH REGARD TO THE STEP (II) S ELECTION

- (13) If Newco otherwise meets the requirements of a small business corporation under § 1361, Newco will be eligible to make a subchapter S election under § 1362(a).
- (14) If Newco becomes an S corporation, it will become subject to the built-in gain provisions of § 1374. For purposes of § 1374, Newco's 10-year recognition period will begin on the first day that Newco is an S corporation.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the Transaction under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction not specifically covered by the above rulings. In particular, no opinion is

expressed concerning whether Newco is, in fact, an S corporation for Federal tax purposes.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

It is important that a copy of this letter be attached to the Federal income tax return of each taxpayer involved for the taxable year in which the transactions covered by this letter are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-124015-06) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

Douglas C. Bates

Douglas C. Bates
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)